PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants	:	W. Daniel Hillis; Roderick A. Hyde; Nathan P. Myhrvold; Lowell L. Wood, Jr.
Filed	:	January 14, 2004
For	:	PHOTO-DETECTOR FILTER HAVING A CASCADED LOW NOISE AMPLIFIER

Docket No. : 0803-001-025-000000

Mail Stop Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF MAILING BY "EXPRESS MAIL"

Sir:

I hereby certify that the enclosures listed below are being deposited with the United States Postal Service "EXPRESS MAIL Post Office to Addressee" service under 37 C.F.R. § 1.10, Mailing Label Certificate No. EM057637038US, on 20 June 2007, addressed to Mail Stop Issue Fee; Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Respectfully submitted,

Searete LLC

Jennifer Badley

Jennifer Badley

Enclosures:

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Comments on Statement of Reasons for Allowance

EXPRESS MAIL NO. EM057637038US

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants	:	W. Daniel Hillis; Roderick A. Hyde; Nathan P. Myhrvold; Lowell L. Wood, Jr.
Application No.	:	10/758,950
Filed	:	January 14, 2004
TITLE	:	PHOTO-DETECTOR FILTER HAVING A CASCADED LOW NOISE AMPLIFIER
Confirmation No.	:	6199

Docket No. : 0803-001-025-000000

Customer No. : 44,765

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Alexandria, VA 22313-1450

COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE

Sir:

In response to Examiner's statement of reasons for allowance in the Notice of Allowability dated 21 March 2007, Applicant Entity (hereinafter "Applicant") agrees that the case is allowable. Furthermore, in the Office Action of 21 March 2007, Examiner states:

> The information disclosure documents filed 01/14/04, 3/28/05, 7/27/05, 11/21/05, 12/27/05 contain Non-Patent Literature (NPL) that does not state the year the documents were published. Examiner accidentally overlooked this fact. Therefore the NPL, which has not been considered, has been crossed out, initialed and dated by examiner. It has been placed in the application filed, but the information referred to therein has not been considered as to the merits.... See MPEP S 609.05(a).

Examiner's Notice of Allowability, page 2 (21 March 2007).

Applicant respectfully points out that Applicant understands that one version of MPEP § 2128 states that

> Prior art disclosures on the Internet or on an online database are considered to be publicly available as of the date the item was publicly posted. If the publication does not include a publication date (or retrieval date), it cannot be relied upon as prior art under 35 U.S.C. 102(a) or (b), although it may be relied upon to provide evidence regarding the state of the art. Examiners may ask the Scientific and Technical Information Center to find the earliest date of publication.

MPEP S 2128.01 (8th ed. First Revision). Accordingly, Applicant understands Examiner's position regarding the internet NPL that does not include a clear publication date (or retrieval date). However, Applicant also respectfully points out that, irrespective of the foregoing, Examiner has previously substantively considered the internet NPL (as well as the non-Internet NPL) and found the claims allowable over same. Specifically, in the 09 August 2006 Office Action Examiner clearly – albeit inadvertently – considered both the Internet NPL and the non-Internet NPL and clearly initialed the Supplemental Information Disclosure Statement received by the OIPE on 27 December 2005; the Supplemental Disclosure Statement received by the OIPE on 21 November 2005; the Supplemental Disclosure Statement received by the OIPE 27 July 2005; the Supplemental Disclosure Statement received by the OIPE 28 March 2005; and the Information Disclosure Statement filed with the original application signed and considered by Examiner on 2 August 2006. That is, even though Examiner is now lining through both Internet and non-Internet NPL, Applicant respectfully points out that Examiner has previously treated both the Internet and non-Internet NPL "as if" the dates were established, subsequently considered such NPL, and found the claims patentable over same. Applicant did not and does not want this fact to be lost in light of the recent technicalities and subsequent lining through of the Internet NPL and non-Internet NPL.

To the extent that summarization and/or paraphrasing has been done with respect to the Notice of Allowability, Applicant points out that the application and the technical material of record has meaning as such would be understood by one of skill in the art. Applicant continues to assert that any and all claims argued in any previous Office Action Response(s) are patentable for at least the reasons set forth therein. Applicant points out

that Examiner statements regarding expressly cited claim language are not statements regarding other claim language not expressly cited; Applicant contests any assertion(s) that Applicant's claim language is shown in the art. Accordingly, Applicant hereby reserves the right to address the technical material and/or any other issues related to the present application in this or any subsequent forum.

In addition to the foregoing, Applicant respectfully points out that in the Office Action related correspondence(s) of 09 November 2006, page 28, wherein Applicant recited "Applicant continues to assert all points of any previous Office Action..." should read/have read "Applicant continues to assert all points of (e.g., caused by, resulting from, responsive to, etc.) any previous and/or otherwise related Office Action, and no waiver (legal, factual, or otherwise), implicit or explicit, is hereby intended."

CONCLUSION

Applicant may have herein cancelled and/or amended one or more claims. Applicant notes that any such cancellations and/or amendments will have transpired (i) prior to issuance and (ii) in the context of the rules that govern claim interpretation during prosecution before the United States Patent and Trademark Office (USPTO). Applicant notes that the rules that govern claim interpretation during prosecution form a radically different context than the rules that govern claim interpretation subsequent to a patent issuing. Accordingly, Applicant respectfully submits that any cancellations and/or amendments herein should be held to be tangential to and/or unrelated to patentability in the event that such cancellations and/or amendments are viewed in a post-issuance context under post-issuance claim interpretation rules.

Insofar as that the Applicant may have herein cancelled/amended claims sufficient to obtain a Notice of Allowability of all claims pending Applicant may not have herein explicitly addressed all rejections and/or statements in Examiner's Office Action. The fact that rejections and/or statements may not be herein explicitly addressed should NOT be taken as an admission of any sort, and Applicant hereby reserves any and all rights to contest such rejections and/or statements at a later time. Specifically, no waiver (legal, factual, or otherwise), implicit or explicit, is hereby intended (e.g., with respect to any

facts of which Examiner took Official Notice, and/or for which Examiner has supplied no objective showing, Applicant hereby contests those facts and requests express documentary proof of such facts at such time at which such facts may become relevant). For example, although not expressly set forth herein, Applicant continues to assert all points of (e.g. caused by, resulting from, responsive to, etc.) any previous Office Action, and no waiver (legal, factual, or otherwise), implicit or explicit, is hereby intended. Specifically, insofar as that Applicant does not consider any cancelled/unamended claims to be unpatentable, Applicant hereby gives notice that it may file and/or has filed a continuing application in order prosecute such cancelled/unamended claims.

Furthermore, in those instances where a convention analogous to "at least one of A, B, and C, etc." is used, in general such a construction is intended in the sense one having skill in the art would understand the convention (e.g., " a system having at least one of A, B, and C" would include but not be limited to systems that have A alone, B alone, C alone, A and B together, A and C together, B and C together, and/or A, B, and C together, etc.). In those instances where a convention analogous to "at least one of A, B, or C, etc." is used, in general such a construction is intended in the sense one having skill in the art would understand the convention (e.g., " a system having at least one of A, B, or C" would include but not be limited to systems that have A alone, B alone, C alone, A and B together, A and C together, B and C together, and/or A, B, and C together, etc.). It will be further understood by those within the art that virtually any disjunctive word and/or phrase presenting two or more alternative terms, whether in the description, claims, or drawings, should be understood to contemplate the possibilities of including one of the terms, either of the terms, or both terms. For example, the phrase "A or B" will be understood to include the possibilities of "A" or "B" or "A and B."

With respect to any cancelled claims, such cancelled claims were and continue to be a part of the original and/or present patent application(s). Applicant hereby reserves all rights to present any cancelled claim or claims for examination at a later time in this or another application. Applicant hereby gives public notice that any cancelled claims are still to be considered as present in all related patent application(s) (e.g. the original and/or present patent application) for all appropriate purposes (e.g., written description and/or

enablement). Applicant does NOT intend to dedicate the subject matter of any cancelled claims to the public.

Examiner is encouraged to contact the undersigned by telephone at (425) 467-2260 to discuss the above, if desired. Also, if the undersigned attorney has overlooked a relevant teaching in any of the references, Examiner is requested to point out specifically where such teaching may be found.

Respectfully submitted,

Dale Cook
Attorney
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DRC:jmb

Enclosures:
Postcard
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Cert. of Express Mail
Issue Fee Transmittal (+ copy)

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